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In re Application of	:	DECISION ON
SKRYABIN et al	:	
PCT No.: PCT/AU2004/001513	:	
Application No.: 10/577,971	:	PETITION UNDER
Int. Filing Date: 03 November 2004	:	
Priority Date: 03 November 2003	:	
Attorney's Docket No.: GRIHAC P47AUSUS	:	37 CFR 1.137(a),
For: MULTILAYERED PHOTOVOLTAIC...	:	
ENVELOPE SURFACE	:	1.47(a) & 1.181

This is in response to the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a) and RENEWED PETITION UNDER 37 CFR 1.47(a)" filed on 05 May 2008, which is being treated as a renewed petition under 37 CFR 1.47(a), and a petition under 37 CFR 1.181.

BACKGROUND

In a decision from this Office on 05 July 2007, the initial petition under 37 CFR 1.47(a) was dismissed. The decision stated that item (2) had not been satisfied.

On 07 December 2007, the USPTO mailed a "NOTICE OF ABANDONMENT" to the applicants because the above-identified application was abandoned for failure to timely reply to the Decision on Petition mailed on 05 July 2007.

On 05 May 2008, petitioner submitted a petition for revival, which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181 of the above-identified application and a renewed petition under 37 CFR 1.47(a). Petitioner states that USPTO erroneously mailed the decision of 05 July 2007 to the previous Manchester, New Hampshire address, and that petitioner had moved to Concord, New Hampshire, in June of 2006 and promptly informed the USPTO by updating the information associated with Customer Number 020210. As a result, because petitioner did not receive the decision mailed on 05 July 2007 the above-identified application went abandoned.

37 CFR 1.181:

A review of the file shows that indeed the USPTO erroneously mailed the Notice to the wrong address for the law firm. Accordingly, applicants did have the Notice to respond to it in a timely manner. As a result, the Notice of Abandonment mailed 07 December 2007 was mailed in error

DECISION

The petition under 37 CFR 1.181 is **GRANTED**. The Notification of Abandonment mailed 05 July 2007 was in error and is hereby **VACATED**.

As a result, the petition filed under 37 CFR 1.137(a) is **MOOT**, and petitioner will be refunded the petition fee.

37 CFR 1.47(a):

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

The renewed petition has satisfied item 2 under 37 CFR 1.47(a). Thus satisfying all the items under 37 CFR 1.47(a).

Michael Bujold states that since mailing the applications papers to Igor SKRYABIN and George PHANI, Mr. SKRYABIN signed a copy of the declaration and mailed it back.

Bujold's averments, also, do sufficiently demonstrate that a *bona fide* attempt was made to obtain the signature of George PHANI and that he refused to sign the required papers. The declaration and application papers were mailed to him on April 11, 2006, to his home address but he has not returned the required papers. Accordingly, the conduct of Mr. PHANI is interpreted based on the evidence of the papers submitted as a refusal to sign the required papers. Consequently, the current record does sufficiently establish Mr. PHANI refusal to join in the application.

Consequently, the petition has not met the requirements under 37 CFR 1.47(a).

DECLARATION FILED ON 05 MAY 2008

The declaration filed on 05 May 2008 by petitioner and signed by Igor SKRYABIN is defective because there is an alteration on it – applicant crossed the section of the declaration that had the power of attorney. Any alternation made after the signing of an oath or declaration must be supported by a supplemental oath or declaration under §1.67 or must be initialized by said inventor and dated. Note 37 CFR §1.52.

For the reasons above, the application may not enter into national stage processing at this time.

CONCLUSION

The petition under 37 CFR 1.47(a) is **GRANTED** with respect to the nonsigning joint-inventor George PHANI.

The petition under 37 CFR 1.181 is **GRANTED**. The Notification of Abandonment mailed 05 July 2007 was in error and is hereby **VACATED**.

The petition filed under 37 CFR 1.137(a) is **MOOT**.

However, because Mr. SKRYABIN filed a defective declaration as stated above, the application may not enter into national stage processing at this time.

A proper response must be filed within TWO (2) MONTHS from the mail date of this decision is a proper declaration from Mr. SKRYABIN. The two (2) months time period for response may be extended under 37 CFR 1.136(a). Failure to timely file the proper response will result in ABANDONMENT.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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